Supreme Court of the United States

OCTOBER TERM 1943. No.

SAMUEL M. COOMBS, Trustee in Bankruptcy
of Spier Aircraft Corporation,
Petitioner,

vs.

UNITED STATES OF AMERICA.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion Below.

The opinion of the United States Circuit Court of Appeals for the Third Circuit was rendered August 4, 1943, and is reported in 130 Fed. (2d) 736.

II.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240-A of United States Judicial Code as amended by Act of February 13, 1925, 28 U. S. C. A. Sec. 347-A.

III.

Statement of Case.

The essential facts in the instant case are fully set forth in the accompanying petition for Writ of Certiorari, and for the sake of brevity are omitted here. All necessary elaboration of the points involved will be made in the Argument which follows.

IV.

Constitutional Provisions and Federal Statutes Involved.

A statement of the pertinent portions of the Constitution of the United States will be found in Appendix "A" hereto annexed and made a part hereof.

V.

ARGUMENT.

POINT I.

(A) The Bankruptcy Court having assumed jurisdiction upon the filing of the petition in involuntary bankruptcy, no subsequent action of any other branch of the government could lawfully divest it thereof, and such jurisdiction could be protected in a summary manner by injunction.

(B) The right of the Bankruptcy Court is inherent in it to issue an injunction when necessary to prevent the defeat or impairment of its jurisdiction.

The application of familiar and accepted principles of law relating to administration of bankrupt estates to the facts in the case at bar make manifest the error in the Courts below. It is fundamental that the filing of a petition in bankruptcy fixes the date from which the sole, exclusive and complete jurisdiction attaches.

Mueller v. *Nugent*, 184 U. S. 1, 7 A. B. R. 224.

It is likewise fundamental that all property in the actual or constructive possession of a bankrupt, or in which it claims an interest, passes upon the filing of the petition in bankruptcy, into the custody of the Bankruptcy Court; and, that to protect its jurisdiction from interference that Court

may issue an injunction and determine preliminarily all questions concerning possession.

> *Isaacs* v. *Hobbs*, 282 U. S. 734, 75 L. Ed. 645, 17 A. B. R. (N. S.) 273;
> *Straton* v. *New*, 283 U. S. 318, 75 L. Ed. 1060, 17 A. B. R. (N. S.) 630;
> *U. S.* v. *Wood*, 290 Fed. 109 (C. C. A. 2nd Cir.), 1 A. B. R. (N. S.) 36.

In the case last cited, ROGERS, *C.J.*, speaking for the Circuit Court of Appeals, in affirming the District Court, said:

> "There can be no doubt that if a private litigant claiming a right to priority of payment out of the assets of a bankrupt had come into a court of equity to assert his right to a preference the District Court would have no jurisdiction to entertain the bill. Under the Constitution and the existing Bankruptcy Act enacted by the Congress the jurisdiction of the courts in bankruptcy in the administration of the estates of bankrupts is complete and exclusive. It is exclusive of all other courts. As the Supreme Court declared in the *United States Fidelity Co.* v. *Bray*, 225 U. S. 205, 28 Am. B. R. 202, 56 L. Ed. 1055, the jurisdiction of the bankruptcy courts in all proceedings in bankruptcy 'is intended to be exclusive of all other courts' and such proceedings include among others 'the determination of the preferences and priorities be accorded to claims presented for allowance and payment in regular course'. It continued:
>
> " 'A distinct purpose of the Bankruptcy Act is to subject the administration of the estates of bankrupts to the control of tribunals clothed with authority and charged with the duty of proceeding to final settlement and distribution in a summary way, as are the courts of bankruptcy. Creditors are entitled to have

> this authority exercised, and justly may complain when, as here, an important part of the administration is sought to be effected through the slower and less appropriate processes of a plenary suit in equity in another court involving collateral and extraneous matters with which they have no concern, such as the controversy between the complainant and the indemnitor banks'."

It will be observed that the government is considered as standing on a parity with private litigants, and has no greater rights by virtue of its being the sovereign, other than the priority which is accorded to it by virtue of Section 64 of the Bankruptcy Act. In all other respects it has no greater rights than that which any other creditor may have in the administration of the estate or any person may have in respect to the property of the bankrupt in the hands of the Court for administration.

In *Isaacs* v. *Hobbs, supra,* Mr. Justice Roberts, speaking for the Supreme Court of the United States, in following *Mueller* v. *Nugent, supra,* declared:

> "Upon adjudication, title to the bankrupt's property vests in the trustee with actual or constructive possession, and is placed in the custody of the bankruptcy court. * * * It follows that the bankruptcy court has exclusive jurisdiction to deal with the property of the bankrupt estate. (Citing cases) * * *
>
> "This is but an application of the well recognized rule that when a court of competent jurisdiction takes possession of property through its officers, this withdraws the property from the jurisdiction of all other courts which, though of concurrent jurisdiction, may not disturb that possession; and that the court originally acquiring jurisdiction is competent

to hear and determine all questions respecting title, possession and control of the property." Citing *Murphy* v. *Hofman Co.*, 211 N. S. 562; *Wabash* v. *Adelbert*, 208 U. S. 38; *Harkin* v. *Brundage*, 276 U. S. 36.

Indicative of the power of the Court to deal exclusively with the property which has once passed into its custody, and of the lack of power on the part of the Court to surrender that property until it has been properly and fully administered, is the rule laid down by Mr. Justice Roberts when he said in *Isaacs* v. *Hobbs, supra:*

> "The jurisdiction in bankruptcy is made exclusive in the interest of the due administration of the estate and the preservation of the rights of both secured and unsecured creditors.
>
> "This fact places it beyond the power of the court's officers to oust it by surrender of property which has come into its possession. *Whitney* v. *Wenman*, 198 U. S. 539, 14 Am. B. R. 45, 25 S. Ct. 778, 49 L. Ed. 1157; In *re Schermerhorn* (C. C. A. 8th Cir.), 16 Am. B. R. 507, 145 F. 341. Indeed, a court of bankruptcy itself is powerless to surrender its control of the administration of the estate. *U. S. F. G. Co.* v. *Bray*, 225 U. S. 205, 28 Am. B. R. 207, 32 S. Ct. 620, 56 L. Ed. 1055. The action of the trustee in removing the cause could not, therefore, divest the Texas District Court of its jurisdiction."

That the Bankruptcy Court may protect its jurisdiction by the use of injunctive processes is likewise plain. In

> *Converse* v. *Highway Construction Co.*, 107 Fed. (2d) 127,

the United States Circuit Court of Appeals for the Sixth Circuit dealt with the effect of a petition under Section 77

(b) of the Bankruptcy Act and conflicting requirements of the Norris-LaGuardia Anti-Injunction Act, and said:

> "The court was not compelled to observe the inhibitions of 29 U. S. C. A., Sec. 107, and other related sections commonly known as the Norris-LaGuardia Anti-Injunction Act of March 23, 1932 (29 U. S. C. A., Secs. 101-115). The right of the bankruptcy court is inherent to issue an injunction when necessary to prevent the defeat or impairment of its jurisdiction. *Continental Illinois National Bank & Trust Company* v. *Chicago, Rock Island & Pacific Railway Company,* 294 U. S. 648, 676, 27 A. B. R. (N. S.) 715, 55 S. Ct. 595, 79 L. Ed. 1110; *Ex parte Baldwin,* 291 U. S. 610, 615, 24 A. B. R. (N. S.) 487, 54 S. Ct. 551, 78 L. Ed. 1020."

In *Steelman* v. *All Continent Corporation,* 301 U. S. 72, 81 L. Ed. 1085, the Supreme Court of the United States said:

> "Referring to these statutes, this court has said that 'the power to issue an injunction when necessary to prevent the defeat or impairment of its jurisdiction is * * * inherent in a court of bankruptcy as it is in a duly established court of equity'."
>
> "The jurisdiction in bankruptcy is made exclusive in the interest of the due administration of the estate and the preservation of the rights of both secured and unsecured creditors.
>
> "This fact places it beyond the power of the court's officers to oust it by surrender of property which has come into its possession. *Whitney* v. *Wenman,* 198 U. S. 539, 14 Am. B. R. 45, 25 S. Ct. 778, 49 L. Ed. 1157; In *re Schermerhorn* (C. C. A. 8th Cir.), 16 Am. B. R. 507, 145 F. 341. Indeed, a court of bankruptcy itself is powerless to surrender its control of

> the administration of the estate. *U. S. F. G. Co.* v. *Bray*, 225 U. S. 205, 28 Am. B. R. 207, 32 S. Ct. 620, 56 L. Ed. 1055. The action of the trustee in removing the cause could not, therefore, divest the Texas District Court of its jurisdiction."

In *Collier on Bankruptcy*, 14th Edition, Vol. 1, page 253, the author states the rule at page 254:

> "Like any court of equity, once the bankruptcy court acquires custody of property, it may protect that custody in a summary manner by injunction. Section 265 of the Judicial Code (28 U. S. C., Sec. 379), which prohibits issuance of an injunction by any court of the United States to stay proceedings in a state court, expressly excepts 'cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.' Citing in *re Hoey, Tilden & Co.*, 292 Fed. 269; *Roberts Auto & Radio Supply Co.* v. *Dattle*, 44 Fed. (2d) 159, 17 A. B. R. (N. S.) 185 (C. C. A. and 3rd Cir.)."

In *Roberts Auto & Radio Supply Co.* v. *Dattle, supra*, the Court said:

> "Consequently, Congress has seen fit to make the jurisdiction of the bankruptcy courts exclusive in the administration and distribution of the assets of a bankrupt, title to which assets vests in the trustee when elected as of the date of filing the petition." Citing *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300; *Everett* v. *Judson*, 228 U. S. 474.

In a discussion of the right of injunction arising out of the Emergency Rent Control Act of 1942, the Circuit Court of Appeals for the Fifth Circuit, in re

> *Henderson, Adm.* v. *Fleckinger*, 136 Fed. (2) 381

said:

> "The Federal act, assuming its constitutionality, is a part of the supreme law of the land, and the courts ought to carry it out fully, using the injunctive processes it prescribes."

This case is cited with approval in re

Brown, Adm. v. *Wright*, 137 Fed. (2d) 484.

We contend that the Bankruptcy Act, the constitutionality of which has been upheld, should be carried out fully, and the injunctive powers of that Court be fully enforced.

POINT II.

The requisition order could not have legally issued unless the fact had been established that all other means of obtaining the use of the property for the defense of the United States upon fair and reasonable terms had been exhausted.

The statute under which the requisition was issued will be found at page 60a of the Transcript. The record in the Court below shows that petitioner speedily brought on for hearing the proposal made by the government, through Defense Plant Corporation, in the name of Simmonds Aerocessories, Inc., to purchase the machine tools and equipment of the bankrupt for $132,300.00, and at which hearing other offers for all of the assets of the bankrupt as a going concern would be received.

The language of the statute under which the requisition issued authorizes the requisitioning of property after all

other means of obtaining the use of such property for the defense of the United States, upon fair and reasonable terms, has been exhausted. When the government sought an order against petitioner to deliver the property enumerated in the requisitions, it filed its petition, in which the blanket statement was made that the means required by statute for obtaining the property had in fact been exhausted. This was a conclusion on the part of the government which was utterly unsupported by any facts. It was inconsistent with the actual facts, namely, that at the very time when the requisition was being issued the property involved was the subject matter of the offer to purchase made by the government through its own agency. The positions taken therefore were irreconcilable. The government could not argue that it had been deprived of its day in Court when that day had in fact neither arrived nor been delayed. By the same process of reasoning, the government could not contend that all efforts to obtain the property upon fair and reasonable terms had been exhausted, when the day fixed for the hearing upon its own offer to acquire the same property had not yet arrived.

This is made manifest by the failure of denial that the offer of $132,300.00 for the requisitioned property was only in the name of Simmonds Aerocessories, Inc., but actually sponsored by Defense Plant Corporation, a governmental agency.

In *Alpirn* v. *Huffman*, 49 Fed. Supp. 337 (D. Neb. 1943), the underlying principles here involved are discussed. That case involved the taking of personal property, consisting of the contents of a junk yard and equipment at Omaha, Nebraska by the Metals Reserve Corporation, a govern-

mental agency, and inferentially the constitutionality of the Act of October 16, 1941, which is the very Act involved in the present petition, was assailed. The Court in denying an injunction under the particular circumstances existing, at page 340, quoted Chief Justice Taney, in *Mitchell* v. *Harmony*, 54 U. S. 115, 126, 134, 13 How. 115, 14 L. Ed. 75, which involved the taking of private property during the Mexican War, and said:

> "There are, without doubt, occasions in which private property may lawfully be taken possession of or destroyed to prevent it from falling into the hands of the public enemy; and, also, where a military official charged with a particular duty may impress private property into the public service or take it for public use. Unquestionably in such cases, the government is bound to make full compensation to the owner; but, the officer is not a trespasser. But, we are clearly of the opinion that in all of these cases the danger must be immediate and impending; or, the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the case calls for. It is impossible to define the particular circumstances of danger or necessity in which this power may be lawfully exercised. Every case must depend upon its own circumstances. *It is the emergency that gives the right, and the emergency must be shown to exist before the taking can be justified.*" (Italics ours.)

POINT III.

The Executive Branch of the government was without power to issue an order encroaching upon the authority of the Judicial Branch which had already acquired and was exercising complete, sole and exclusive jurisdiction over the subject matter.

The powers of the Bankruptcy Court flow from the Constitution of the United States, which provides that Congress shall have the power to establish uniform laws on the subject of bankruptcies. The doctrine of separation of powers and the encroachment by the Executive and Judicial Departments of the government upon each other, has oft been discussed from the time of *Marbury* v. *Madison*, 1 Cranch. 137, 177; 2 L. Ed. 60.

In the instant case, however, it was conceded by the government in its brief in the Circuit Court of Appeals below, at page 11 thereof:

> "We have no quarrel with and subscribe to the principles stated by the appellant in his brief as to Points I, II, and III. It is assuredly fundamental and indisputable that the jurisdiction of the Bankruptcy Court to dispose of the assets of a bankrupt is exclusively within the Court which has the custody of the estate and, of course, the Court may protect its custody."

Point I in the brief of petitioner in the Court below was that jurisdiction having once been assumed by the Bankruptcy Court, "no subsequent action of any other branch of the government could lawfully divest it thereof". This

all inclusive language, concededly correct, of necessity applied to the Executive Branch of the government, as well as to all others. The decision by the Circuit Court of Appeals below extended the force and effect of the right of the Executive Branch of the government to interfere with the lawful and orderly processes of the Judicial Branch of the government, beyond constitutional warrant.

It may be conceded that the Courts have no general supervisory power over proceedings and action of various administrative branches of the government. Any interference by the Courts with the performance of the ordinary duties of the Executive Branch of the government would be productive of nothing but mischief. We concede that the Judiciary cannot properly interfere with Executive action when the Executive officer is authorized to exercise his judgment or discretion. Here, however, the Executive action through the medium of the Secretary of the Navy and his subordinate officers was not discretionary. The Executive action taken was under a statute which prescribes certain fundamental requirements with which there had to be strict compliance before any action could legally be taken thereunder. Any other construction or view would be tantamount to putting the Executive in a position where by order or directive, statutes may be avoided and the rights of private citizens invaded without recourse.

Petitioner contends that Congress intended, in adopting the Bankruptcy Act, to vest in the Courts the power to deal with assets of a bankrupt adjudged as such by Judicial decree. If the course followed in the present instance sanctioned, the effect would be to nullify that power granted by the Constitution and Congress to the Courts, and to do away with due process of law.

If the powers vested in the Bankruptcy Court can in no wise be diminished or encroached upon, it follows that it was the exclusive province of the Bankruptcy Court to fix the value of the property which had once passed into its lawful custody and which it had never surrendered. Consequently, no right existed in the Chief Executive to relegate petitioner to an adjudication by the Court of Claims of the United States with respect to the value of the property requisitioned and taken. *U. S.* v. *Wood, supra.*

POINT IV.

The application of price fixing limitations of the Office of Price Administration, and the seizure of property, limiting compensation therefor to the prices so fixed, is an unlawful invasion of constitutional rights guaranteed by the Fifth Amendment.

Petitioner contended below (Transcript, p. 55a) that any attempt on the part of the government to fix the price for property sought to be requisitioned, and then actually take the property at the prices so fixed, would be unconstitutional. The proposal of the government, through the medium of Defense Plant Corporation and Simmonds Aerocessories, Inc., distinctly provided that "The price to be paid to be approximately $132,300.00 more or less, as may be permitted by the Office of Price Administration as the maximum ceiling prices for such machine tools and equipment." (Transcript, p. 14a.)

In *U. S.* v. *New River Collieries Company,* 262 U. S. 341, 67 L. Ed. 1014, this Court considered the question of

compensation for property confiscated by the government under the Lever Act, and this Court said (at p. 344):

> "The ascertainment of compensation is a judicial function, and no power exists in any other department of the government to declare what the compensation shall be, or to prescribe any binding rule in that regard. *Monongahela Nav. Co.* v. *United States*, 148 U. S. 312, 327, 37 L. ed. 463, 568, 13 Sup. Ct. Rep. 622. Where private property is taken for public use, and there is a market price prevailing at the time and place of the taking, that price is just compensation. *L. Vogelstein & Co.* v. *United States*, decided this day (262 U. S. 337, ante, 1012, 43 Sup. Ct. Rep. 564); *United States* v. *Chandler-Dunbar Co.*, 229 U. S. 53, 80, 81, 57 L. ed. 1063, 1082, 33 Sup. Ct. Rep. 667; *Mississippi & R. River Boom Co.* v. *Patterson*, 98 U. S. 403, 407, 25 L. ed. 206, 208. More would be unjust to the United States, and less would deny the owner what he is entitled to."

In *Brooks-Scanlon Corp.* v. *U. S.*, 265 U. S. 106, 68 L. Ed. 934, cross appeals from judgments of Court of Claims which allowed a portion of the amount claimed for requisitioning by the United States Shipping Board Emergency Fleet Corporation of a contract for the construction of a vessel, were considered by this Court. The determination by the Court below was reversed, and in the course of the opinion this Court, speaking through Mr. Justice Butler, (at p. 123) said:

> "It is the property, and not the cost of it, that is protected by the 5th Amendment. Minnesota Rate Cases (Simpson *v.* Shepard), 230 U. S. 352, 454, 57 L. ed. 1511, 1563, 48 L. R. A. (N. S.) 1151, 33 Sup. Ct. Rep. 729, Ann. Cas. 1916A, 18. By the taking,

the claimant lost and the United States obtained the right to have the completed ship delivered to it on or before February 1, 1918, upon payment of the installments remaining to be paid under the contract. It is settled by the decisions of this court that just compensation is the value of the property taken at the time of the taking. L. Vogelstein & Co. *v.* United States, 262 U. S. 337, 340, 67 L. ed. 1012, 1014, 43 Sup. Ct. Rep. 564; United States *v.* New River Collieries Co. 262 U. S. 341, 344, 67 L. ed. 1014, 1017, 43 Sup. Ct. Rep. 565; Seaboard Air Line R. Co. *v.* United States, 261 U. S. 299, 306, 67 L. ed. 664, 669, 43 Sup. Ct. Rep. 354; Monongahela Nav. Co. *v.* United States, 148 U. S. 312, 341, 37 L. ed. 463, 473, 13 Sup. Ct. Rep. 622. And, if the taking precedes the payment of compensation, the owner is entitled to such addition to the value at the time of the taking as will produce the full equivalent of such value paid contemporaneously. Interest at a proper rate is a good measure of the amount to be added. Seaboard Air Line R. Co. *v.* United States, 261 U. S. 299, 306, 67 L. ed. 664, 669, 43 Sup. Ct. Rep. 354; United States *v.* Benedict, 261 U. S. 294, 298, 67 L. ed. 662, 664, 43 Supp. Ct. Rep. 357; United States *v.* Brown, decided November 12, 1923, 263 U. S. 78, ante, 171, 44 Sup. Ct. Rep. 92."

Petitioner contends that under the law as settled by this Court in the cases just cited, the just compensation to be paid for the property taken is the value of the property at the time of the taking. If the government, through the medium of the Office of Price Administration, is permitted to fix the price at which the property is to be taken, and then take at the price so fixed, such procedure would be contrary to the decisions of this Court and would constitute

an invasion of the rights guaranteed by the Fifth Amendment.

Petitioner has no quarrel with those agencies of the government which were created and are now charged with the responsibility of evolving measures to check inflation or the skyrocketing of prices of commodities essential to the public welfare. The contention is advanced, however, that when an agency of the government, such as the Office of Price Administration, intrudes upon the rights of the public, and in this case the creditors of the bankrupt corporation, and by the imposition of price fixing limitations is thus permitted to permeate, dominate, and in effect unfairly limit and control the measure of compensation to be awarded one whose property has been seized by the government under a War Powers Act, then such acts constitute an invasion of constitutional rights.

Petitioner, in his representative capacity, respectfully contends that any other holding would deprive him of protection against the deprivation of property without due process of law.

Conclusion.

It is respectfully submitted, therefore, that in order that the errors herein pointed out may be corrected and justice done, and the law properly and authoritatively defined, that the judgment of the United States Circuit Court of Appeals for the Third Circuit should be reveiwed and reversed, and, to such an end a Writ of Certiorari should be granted.

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